

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

UNITED STATES OF AMERICA,

Plaintiff,

v.

GILBERTO LOPEZ-MONJARAZ,

Defendant.

3:09-cr-0046-LRH-RAM

ORDER

Before the court is the Ninth Circuit's order on remand for the limited purpose of either granting or denying a certificate of appealability to defendant Gilberto Lopez-Monjaraz ("Monjaraz") for his appeal of the court's order denying his renewed motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (Doc. #53<sup>1</sup>). Doc. #62.

On November 3, 2009, Monjaraz pled guilty to possessing with intent to distribute 500 grams or more of methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(viii). Doc. #14. Monjaraz was subsequently sentenced to one hundred eighty-eight (188) months incarceration. Doc. #20.

On June 9, 2011, Monjaraz filed a motion to vacate pursuant to 28 U.S.C. §2255. Doc. #22. On October 18, 2011, the court granted Monjaraz's motion, vacated the judgment, and re-entered the judgment to allow Monjaraz an opportunity to appeal his sentence. *See* Doc. #28. Monjaraz

<sup>1</sup> Refers to the court's docket number.

1 appealed his sentence (Doc. #30) which was ultimately affirmed by the Ninth Circuit (Doc. #44).

2 Subsequently, Monjaraz filed a renewed motion to vacate, set aside, or correct his sentence  
3 pursuant to 28 U.S.C. § 2255 (Doc. #45) which was denied by the court (Doc. #53). In response,  
4 Monjaraz filed a motion for reconsideration of the court's order (Doc. #54) which was also denied  
5 by the court (Doc. #61). Thereafter, the Ninth Circuit issued the underlying order of remand for the  
6 limited purpose of either granting or denying a certificate of appealability on Monjaraz's motion to  
7 vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. Doc. #62.

8 Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), "an appeal  
9 may not be taken to the court of appeals from . . . the final order in a proceeding under section  
10 2255" unless a district court issues a certificate of appealability ("COA") based on "a substantial  
11 showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(1)(B).

12 Here, the court finds that Monjaraz has not shown a denial of a constitutional right in his  
13 § 2255 motion. In the court's order denying his § 2255 motion, the court noted that Monjaraz had  
14 failed to raise any meritorious challenge to his sentence because he received a sentence within the  
15 contemplated guideline range. *See* Doc. #53. Further, Monjaraz has failed to demonstrate that  
16 reasonable jurists would find the court's assessment of his claims debatable or wrong. *See Allen v.*  
17 *Ornoski*, 435 F.3d 946, 950-951 (9th Cir. 2006). Therefore, the court shall deny Monjaraz a  
18 certificate of appealability on his motion to vacate sentence pursuant to 28 U.S.C. § 2255.

19  
20 IT IS THEREFORE ORDERED that defendant is not entitled to a Certificate of  
21 Appealability.

22 IT IS SO ORDERED.

23 DATED this 16th day of January, 2014.

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26  
  
LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE